

**Executive Summary – Enforcement Matter – Case No. 46653**

**City of Brenham**

**RN101721355**

**Docket No. 2013-0741-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of Brenham WWTP, 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch, Brenham, Washington County

**Type of Operation:**

Wastewater treatment plant ("WWTP")

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 9, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,788

**Amount Deferred for Expedited Settlement:** \$1,957

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$7,831

Name of SEP: Houston Arboretum & Nature Center

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 46653**  
**City of Brenham**  
**RN101721355**  
**Docket No. 2013-0741-MWD-E**

***Investigation Information***

**Complaint Date(s)** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** March 21, 2013

**Date(s) of NOE(s):** April 10, 2013

***Violation Information***

Failed to comply with permitted effluent limitations for mercury [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010388001, Effluent Limitations and Monitoring Requirements No. 1].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By January 1, 2013, Respondent demonstrated compliance with all permitted effluent limitations under TPDES Permit No. WQ0010388001. Respondent has conducted sampling throughout the WWTP collection system to determine the source of mercury, scheduled periodic random sampling for mercury throughout the WWTP collection system, and taken steps to introduce an education program to residential and commercial customers to prevent mercury disposal into the WWTP collection system.

**Technical Requirements:**

The Order will require Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See Attachment A)

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**Executive Summary – Enforcement Matter – Case No. 46653**  
**City of Brenham**  
**RN101721355**  
**Docket No. 2013-0741-MWD-E**

**TCEQ Enforcement Coordinator:** Jill Russell, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-4564; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**Respondent:** The Honorable Milton Y. Tate, Jr., Mayor, City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2013-0741-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Brenham
<b>Penalty Amount:</b>	Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831)
<b>SEP Offset Amount:</b>	Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831)
<b>Type of SEP:</b>	Contribution to a Third-Party Pre-Approved SEP
<b>Third-Party Recipient:</b>	Houston Arboretum & Nature Center
<b>Project Name:</b>	<i>Hurricane Ike Habitat Restoration and Removal of Invasive Species</i>
<b>Location of SEP:</b>	San Jacinto River Basin; Gulf Coast Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Houston Arboretum & Nature Center** for the *Hurricane Ike Habitat Restoration and Removal of Invasive Species* project. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to clear hurricane debris and invasive species, conduct a forest inventory of existing vegetation in each acre, and then replant the areas of tree loss in a 155-acre non-profit urban nature sanctuary located on the western edge of Memorial Park in Houston, Texas (the "Arboretum"). Invasive Chinese Privet (*Ligustrum sinensis*) shall also be removed by cutting stems/trunks and treating with approved herbicide to retard subsequent growth. The Third-Party Recipient shall then conduct the forest inventory of existing vegetation in each acre, followed by replanting with native trees and shrubs at a rate of 100 plants per acre.

City of Brenham  
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

The Project will restore the native wildlife habitat at the Arboretum which is located in a highly urban area. The restored forest will enhance water quality by serving as a filter for nutrients and other heavy metals thereby reducing the amount of pollutants reaching Buffalo Bayou. This project will also contribute to public awareness of environmental matters since the Arboretum hosts nearly 200,000 visitors each year.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to the Houston Arboretum & Nature Center SEP and shall mail the contribution with a copy of the Agreed Order to:

Deborah Markey, Executive Director  
Houston Arboretum & Nature Center  
4501 Woodway Drive  
Houston, Texas 77024

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

City of Brenham  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	15-Apr-2013	<b>Screening</b>	16-Apr-2013	<b>EPA Due</b>	5-Jun-2013
	<b>PCW</b>	17-Apr-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Brenham
<b>Reg. Ent. Ref. No.</b>	RN101721355
<b>Facility/Site Region</b>	9-Waco
<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	46653	<b>No. of Violations</b>	2
<b>Docket No.</b>	2013-0741-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jill Russell
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>EC's Team</b>	Enforcement Team 3
<b>Maximum</b>	\$25,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,250
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	12.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,350
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Notes

Enhancement for two months of self-reported effluent violations and one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes

The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$2,812
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$85  
Approx. Cost of Compliance \$10,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,788
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## OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

<b>Final Penalty Amount</b>	\$9,788
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## STATUTORY LIMIT ADJUSTMENT

<b>Final Assessed Penalty</b>	\$9,788
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## DEFERRAL

20.0%

<b>Reduction Adjustment</b>	-\$1,957
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$7,831
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Screening Date 16-Apr-2013

Docket No. 2013-0741-MWD-E

PCW

Respondent City of Brenham

Policy Revision 3 (September 2011)

Case ID No. 46653

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101721355

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for two months of self-reported effluent violations and one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 12%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 12%

Screening Date 16-Apr-2013

Docket No. 2013-0741-MWD-E

PCW

Respondent City of Brenham

Policy Revision 3 (September 2011)

Case ID No. 46653

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101721355

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010388001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limitations, as documented during a record review conducted on March 21, 2013, and shown in the attached table.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 30.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate mercury to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

## Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One monthly event is recommended for the month of October 2012.

## Good Faith Efforts to Comply

25.0% Reduction

\$1,875

Extraordinary

Ordinary

N/A

Notes

Before NOV NOV to EDPRP/Settlement Offer

X	
	(mark with x)

The Respondent achieved compliance by January 1, 2013.

Violation Subtotal \$5,625

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$85

Violation Final Penalty Total \$6,525

This violation Final Assessed Penalty (adjusted for limits) \$6,525

# Economic Benefit Worksheet

**Respondent** City of Brenham  
**Case ID No.** 46653  
**Reg. Ent. Reference No.** RN101721355  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	31-Oct-2012	1-Jan-2013	0.17	\$85	n/a	\$85

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and take necessary corrective actions to maintain compliance with permitted effluent limits, including sampling conducted throughout the wastewater treatment plant ("WWTP") collection system to determine the source of mercury, scheduling periodic random sampling for mercury throughout the WWTP collection system, and taking steps to introduce an education program to residential and commercial customers to prevent mercury disposal into the WWTP collection system. Date required is the first month of noncompliance. The final date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$85

Screening Date 16-Apr-2013  
Respondent City of Brenham  
Case ID No. 46653  
Reg. Ent. Reference No. RN101721355  
Media [Statute] Water Quality  
Enf. Coordinator Jill Russell

Docket No. 2013-0741-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number 2  
Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010388001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limitations, as documented during a record review conducted on March 21, 2013, and shown in the attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate mercury to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended for the quarter that contains the month of December 2012.

Good Faith Efforts to Comply

25.0% Reduction

\$937

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent achieved compliance by January 1, 2013.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,263

This violation Final Assessed Penalty (adjusted for limits) \$3,263

# Economic Benefit Worksheet

**Respondent** City of Brenham  
**Case ID No.** 46653  
**Reg. Ent. Reference No.** RN101721355  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for Violation No. 1.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

<b>Effluent Violations Table</b>			
City of Brenham			
RN101721355; Docket 2013-0741-MWD-E			
TPDES Permit No. WQ0010388001			
	Mercury DAV Concentration	Mercury DMAX Concentration	Mercury DAV Loading
<b>Month/Year</b>	<b>Limit =</b> 0.02 µg/L	<b>Limit =</b> 0.04 µg/L	<b>Limit =</b> 0.0006 lb/d
October 2012	0.40	0.77	0.0081
December 2012	0.24	0.24	0.0038

DAV = Daily Average, DMAX = Daily Maximum

µg/L = micrograms per liter

lb/d = pounds per day



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To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## Compliance History Report

**PUBLISHED** Compliance History Report for CN600622898, RN101721355, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN600622898, City of Brenham

**Classification:** SATISFACTORY

**Rating:** 0.10

**Regulated Entity:** RN101721355, City of Brenham WWTP

**Classification:** SATISFACTORY

**Rating:** 0.20

**Complexity Points:** 10

**Repeat Violator:** NO

**CH Group:** 08 - Sewage Treatment Facilities

**Location:** 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in Brenham, Washington County, Texas

**TCEQ Region:** REGION 09 - WACO

**ID Number(s):**

**WASTEWATER PERMIT** WQ0010388001

**WASTEWATER EPA ID** TX0025470

**WASTEWATER AUTHORIZATION** R10388001

**PRETREATMENT EPA ID** TX0025470000

**PRETREATMENT PERMIT** WQ0010388001

**WASTEWATER LICENSING LICENSE** WQ0010388001

**STORMWATER PERMIT** TXR05T338

**STORMWATER PERMIT** TXR05BM27

**SLUDGE AUTHORIZATION** 720022

**Compliance History Period:** September 01, 2007 to August 31, 2012

**Rating Year:** 2012

**Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** April 15, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 15, 2008 to April 15, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Jill Russell

**Phone:** (512) 239-4564

**Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	May 19, 2008	(691011)	Item 29	October 18, 2010	(881832)
Item 2	June 16, 2008	(691012)	Item 30	November 10, 2010	(888318)
Item 3	July 09, 2008	(684563)	Item 31	December 14, 2010	(896600)
Item 4	July 10, 2008	(691013)	Item 32	February 09, 2011	(909397)
Item 5	August 13, 2008	(711896)	Item 33	March 11, 2011	(916656)
Item 6	September 04, 2008	(711897)	Item 34	March 14, 2011	(925830)
Item 7	October 09, 2008	(711898)	Item 35	May 13, 2011	(938353)
Item 8	November 11, 2008	(728317)	Item 36	June 13, 2011	(945720)
Item 9	December 03, 2008	(728318)	Item 37	July 12, 2011	(952968)
Item 10	February 06, 2009	(751348)	Item 38	September 12, 2011	(965666)
Item 11	March 05, 2009	(751349)	Item 39	September 20, 2011	(959627)
Item 12	April 14, 2009	(751350)	Item 40	October 18, 2011	(971705)
Item 13	April 21, 2009	(741045)	Item 41	November 14, 2011	(977869)
Item 14	May 07, 2009	(769150)	Item 42	December 12, 2011	(984641)
Item 15	June 09, 2009	(769151)	Item 43	January 11, 2012	(990931)
Item 16	September 10, 2009	(807260)	Item 44	February 13, 2012	(998299)
Item 17	September 23, 2009	(925831)	Item 45	March 17, 2012	(1003818)
Item 18	October 13, 2009	(807261)	Item 46	April 11, 2012	(1010386)
Item 19	November 10, 2009	(807262)	Item 47	May 16, 2012	(1016773)
Item 20	December 16, 2009	(807263)	Item 48	June 15, 2012	(1024512)
Item 21	February 10, 2010	(807259)	Item 49	July 12, 2012	(1031890)
Item 22	March 09, 2010	(831803)	Item 50	September 07, 2012	(1047027)
Item 23	April 06, 2010	(831804)	Item 51	September 12, 2012	(1038318)
Item 24	May 05, 2010	(831805)	Item 52	October 04, 2012	(1062199)
Item 25	June 08, 2010	(846558)	Item 53	December 10, 2012	(1062201)
Item 26	July 13, 2010	(861115)	Item 54	January 03, 2013	(1043000)
Item 27	August 09, 2010	(867181)	Item 55	February 13, 2013	(1079656)
Item 28	September 09, 2010	(874234)			

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	08/14/2012 (1028317)	CN600622898
	Self Report?	NO	Classification: Minor
	Citation:	40 CFR Chapter 403, SubChapter N, PT 403 403.1 WQ0010388001 PERMIT	
	Description:	The Control Authority (CA) failed to analyze wastewater effluent samples from the wastewater treatment plant (WWTP) down to the required minimum analytical level (MAL) for several pollutants.	
	Self Report?	NO	Classification: Minor
	Citation:	30 TAC Chapter 315, SubChapter A 315.1 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(1)(iii) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(1)(iii)(B)(3) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(1)(iii)(B)(4) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(ii) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(iii) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(5)	
	Description:	The Control Authority failed to notify the Longwood facility of its applicable categorical pretreatment standards and failed to issue a permit for the applicable pretreatment standards. The Control Authority failed to identify the character and volume of all the pollutants contributed to the Publicly Owned Treatment Works by the Longwood facility.	
	Self Report?	NO	Classification: Minor
	Citation:	30 TAC Chapter 315, SubChapter A 315.1 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(5)	
	Description:	The CA failed to initiate enforcement action to the Blue Bell Snack Plant, Blue Bell Creamery, and Longwood Industries for failing to submit their applications for permit renewal 30 days prior to expiration.	

3	Date:	12/31/2012 (1079657)	CN600622898	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		

N/A

N/A

N/A

N/A

N/A

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF BRENHAM  
RN101721355**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2013-0741-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Brenham ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant at 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in Brenham, Washington County, Texas (the "Facility").
2. The Respondent has discharged municipal into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 15, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Seven Hundred Eighty-Eight Dollars (\$9,788) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). One Thousand Nine Hundred Fifty-Seven Dollars (\$1,957) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that by January 1, 2013, the Respondent demonstrated compliance with all permitted effluent limitations under Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010388001. The Respondent has conducted sampling throughout the wastewater treatment plant ("WWTP") collection system to determine the source of mercury, scheduled periodic random sampling for mercury throughout the WWTP collection system, and taken steps to introduce an education program to residential and commercial customers to prevent mercury disposal into the WWTP collection system.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010388001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on March 21, 2013, and shown in the following table:

<b>Effluent Violations Table</b>			
	Mercury DAV Concentration	Mercury DMAX Concentration	Mercury DAV Loading
<b>Month/Year</b>	<b>Limit =</b> 0.02 µg/L	<b>Limit =</b> 0.04 µg/L	<b>Limit =</b> 0.0006 lb/d
October 2012	0.40	0.77	0.0081
December 2012	0.24	0.24	0.0038

DAV = Daily Average, DMAX = Daily Maximum  
µg/L = micrograms per liter  
lb/d = pounds per day

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Brenham, Docket No. 2013-0741-MWD-E" to:  
  
Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Pam Davis  
For the Executive Director

9/18/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Milton Y. Tate, Jr.  
Signature

5/29/13  
Date

Milton Y. Tate, Jr.  
Name (Printed or typed)  
Authorized Representative of  
City of Brenham

Mayor  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.



**Attachment A**  
**Docket Number: 2013-0741-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Brenham
<b>Penalty Amount:</b>	Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831)
<b>SEP Offset Amount:</b>	Seven Thousand Eight Hundred Thirty-One Dollars (\$7,831)
<b>Type of SEP:</b>	Contribution to a Third-Party Pre-Approved SEP
<b>Third-Party Recipient:</b>	Houston Arboretum & Nature Center
<b>Project Name:</b>	<i>Hurricane Ike Habitat Restoration and Removal of Invasive Species</i>
<b>Location of SEP:</b>	San Jacinto River Basin; Gulf Coast Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Houston Arboretum & Nature Center** for the *Hurricane Ike Habitat Restoration and Removal of Invasive Species* project. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to clear hurricane debris and invasive species, conduct a forest inventory of existing vegetation in each acre, and then replant the areas of tree loss in a 155-acre non-profit urban nature sanctuary located on the western edge of Memorial Park in Houston, Texas (the "Arboretum"). Invasive Chinese Privet (*Ligustrum sinensis*) shall also be removed by cutting stems/trunks and treating with approved herbicide to retard subsequent growth. The Third-Party Recipient shall then conduct the forest inventory of existing vegetation in each acre, followed by replanting with native trees and shrubs at a rate of 100 plants per acre.

City of Brenham  
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

The Project will restore the native wildlife habitat at the Arboretum which is located in a highly urban area. The restored forest will enhance water quality by serving as a filter for nutrients and other heavy metals thereby reducing the amount of pollutants reaching Buffalo Bayou. This project will also contribute to public awareness of environmental matters since the Arboretum hosts nearly 200,000 visitors each year.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to the Houston Arboretum & Nature Center SEP and shall mail the contribution with a copy of the Agreed Order to:

Deborah Markey, Executive Director  
Houston Arboretum & Nature Center  
4501 Woodway Drive  
Houston, Texas 77024

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

City of Brenham  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.